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October 13, 1982

Commissioner Rodney L. Scribner
Department of Finance & Administration
State House Station #78
Augusta, Maine 04333

Dear Commissioner Scribner:

You have requested my advice as to whether, if the tax indexing initiative measure (L.D. 1737) is approved by the people on November 2, the State Budget Officer would be justified in declaring on December 1, 1982 that insufficient funds are available to implement the accelerated cost recovery benefits which were conditionally enacted by the 110th Legislature. You have indicated that tax indexing for 1981 and 1982, as proposed in the initiative measure, would cost approximately \$30 million in fiscal year 1982-83 and that, if indexing is not considered, revenues will probably exceed appropriations by an amount sufficient to fund the accelerated cost recovery benefits. My opinion is that such a declaration would be justified under the circumstances described above.

The accelerated cost recovery benefits were enacted as part of P.L. 1981, C. 704, AN ACT Providing for Conformity with the Internal Revenue Code for Taxable Years Ending in 1982. Section 9 of that act provides, in part, that

[t]he State Budget Officer shall document and certify to the legislature on December 1, 1982 whether or not there is sufficient unappropriated revenue available by an amount sufficient to fund the full federal conformity, with the exception of safe harbor lease benefits. . . . In his certification process, he shall take into account all outstanding contingencies.

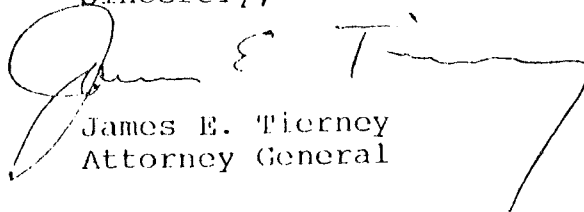
The next two sentences of Section 9 provide for the repeal of one of the two alternative groups of tax provisions conditionally enacted, depending upon whether or not "sufficient unappropriated revenue" is available.

If it is approved by the people on November 2, the tax indexing initiative measure will have the effect of a legislative appropriation. Although the measure would not become effective until at least mid-December, it would nevertheless constitute on December 1 a certain and determinable liability of the State. under the plain language of the conformity act, the revenue outflow resulting from indexing appropriately would be considered in determining whether sufficient excess revenues are available to fund the accelerated cost recovery benefits.

This result is reinforced by the 110th Legislature's apparent cognizance of the implications of the pending initiative in its consideration of the accelerated cost recovery proposal. During debate on the latter bill, Senator Collins indicated that "probably the only thing that needs to be directly addressed is the point raised by what might be the result if the voters in November were to adopt a specific proposal that will be on the ballot." Me. Legis. Record (Senate) April 29, 1982. Senator Collins' response was that, by the time the indexing measure became effective in December 1982, the 111th Legislature would be in office and in a position to deal with any shortfall in funding the accelerated cost recovery benefits.

Consequently, since the 110th Legislature expressly provided for the possibility that sufficient funding might not be available on December 1 to implement accelerated cost recovery benefits and also contemplated that tax indexing could be a factor precluding those benefits, I conclude that the outcome of the tax indexing initiative would appropriately be taken into account by the State Budget Officer in making his statutorily-mandated determination.

Sincerely,


James E. Tierney
Attorney General